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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,700	02/16/2001	Robert M. Szabo	6169-156	4280

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EXAMINER

LASTRA, DANIEL

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 12/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/785,700

Applicant(s)

SZABO ET AL.

Examiner

DANIEL LASTRA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09/20/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-24 have been examined. Application 09/785,700 (METHOD AND APPARATUS FOR STIMULATING COMMERCE) has a filing date 02/16/01.

Response to Amendment

2. In response to Advisory Action 08/30/04, the Applicant filed an RCE and amended claims 1, 2, 7, 10, 16, 17 and 22.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8-21 and 23-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Gardenswartz et al (U.S. 6,055,573).

As per claim 1, Gardenswartz teaches:

A method of providing promotional material to consumers comprising:

establishing a computer communications session between a merchant computer system and a third-party remote shopping stimulation system (see figure 1, column 3, lines 30-60; column 7, lines 54-62);

said third-party remote shopping stimulation system reading consumer purchase information from said merchant computer system, said consumer purchase information comprising consumer identifying information and product information (see column 13, lines 12-50);

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based on said consumer purchase information, identifying one or more *potential* consumers of one or more products (see column 15, lines 5-40);

in said third-party remote shopping stimulation system, associating said promotional material corresponding to said one or more products with said identified consumers (see column 15, lines 5-65); and

making said promotional material available to said identified consumers using a promotional material delivery system (see column 15, lines 40-55).

As per claim 2, Gardenswartz teaches:

The method of claim 1, said identifying step further comprising determining a product consumption rate from said consumer purchase information to identify said one or more *potential* consumers of one or more products and offering said one or more consumers equivalent, but different products" (see column 15, lines 19-40).

As per claim 3, Gardenswartz teaches:

The method of claim 1, wherein said step of reading consumer purchase information is responsive to a merchant request (see column 15, lines 5-40).

As per claim 4, Gardenswartz teaches:

The method of claim 1, wherein *each* said step is *performed* responsive to detecting a business necessity in an inventory management system (see column 15, lines 5-65).

As per claim 5, Gardenswartz teaches:

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The method of claim 1, wherein said consumer purchase information is read from a purchase history database comprising consumer purchase information for a plurality of different merchants (see column 6, lines 1-12).

As per claim 6, Gardenswartz teaches:

The method of claim 1, wherein said one or more products include services (see column 14, lines 50-67).

As per claim 8, Gardenswartz teaches:

The method of claim 1, wherein said promotional material made available to said identified consumers is in electronic format (see column 15, lines 40-47).

As per claim 9, Gardenswartz teaches:

The method of claim 1, wherein said promotional material made available to said identified consumers is in printed format (see column 4, lines 25-45).

Claim 10 contains the same limitation as claims 1 and 4 therefore the same rejection is applied.

Claim 11 contains the same limitation as claim 1 therefore the same rejection is applied.

Claim 12 contains the same limitation as claim 1 therefore the same rejection is applied.

Claim 13 contains the same limitation as claim 1 therefore the same rejection is applied.

Claim 14 contains the same limitation as claim 4 therefore the same rejection is applied.

Claim 15 contains the same limitation as claim 1 therefore the same rejection is applied.

Claim 16 contains the same limitation as claim 1 therefore the same rejection is applied.

Claim 17 contains the same limitation as claim 2 therefore the same rejection is applied.

Claim 18 contains the same limitation as claim 3 therefore the same rejection is applied.

Claim 19 contains the same limitation as claim 4 therefore the same rejection is applied.

Claim 20 contains the same limitation as claim 5 therefore the same rejection is applied.

Claim 21 contains the same limitation as claim 6 therefore the same rejection is applied.

Claim 23 contains the same limitation as claim 8 therefore the same rejection is applied.

Claim 24 contains the same limitation as claim 9 therefore the same rejection is applied.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardenswartz et al (U.S. 6,055,573) in view of Deaton et al (U.S. 6,611,811).

As per claim 7, Gardenswartz teaches:

The method of claim 1, but fails to teach said product information comprising product expiration information and product identifying information wherein said step of identifying one or more *potential* consumers of products is based upon the expiration information of products (see column 70, lines 4-25; column 90; column 118, lines 52-65). Deaton teaches "A consumption rate analysis is performed based on historical product purchases. Non-perishable products that may typically be consumed over a period of more than one week are analyzed to determine the rate in which they are consumed for each ID. This consumption rate is compared with the date of last purchased so that a prediction of next purchase may be made". Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Gardenswartz would make a consumption rate analysis for perishable products, which typically need to be consumed in less than one week, such as milk, and would transmit incentives to customers for such perishable products, when the product expiration is due, as taught by Deaton. This feature would allow the Gardenswartz system to track perishable and non-perishable products and send corresponding incentives when the next due date to purchase a type of product arrives.

Claim 22 contains the same limitation as claim 7 therefore the same rejection is applied.

Response to Arguments

5. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 703-306-5933. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W STAMBER can be reached on 703-305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Daniel Lastra
December 5, 2004

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Primary Examiner
AU 3622